

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-795
Hawaii Administrative Rules

06/01/16

1. Chapter 17-795, Hawaii Administrative Rules, entitled "Supporting Employment Empowerment (SEE) Program" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 795

SUPPORTING EMPLOYMENT EMPOWERMENT (SEE) PROGRAM

Subchapter 1 General Provisions

- §17-795-1 Purpose
- §17-795-2 Program description
- §17-795-3 Definitions
- §17-795-4 Program administration
- §17-795-5 Contracting authority
- §17-795-6 Confidentiality
- §17-795-7 Geographical location
- §17-795-8 Termination of the program
- §§17-795-9 to 17-795-13 (Reserved)

Subchapter 2 Participant Requirements

- §17-795-14 Eligibility requirements
- §17-795-15 Participation requirements
- §17-795-16 Noncompliance and voluntary quit
- §§17-795-17 to 17-795-22 (Reserved)

Subchapter 3 Employer Requirements

- §17-795-23 Eligibility requirements
- §17-795-24 Application and eligibility determination
- §17-795-25 Eligibility redetermination
- §17-795-26 Notification of eligibility
- §17-795-27 Participation requirements

§17-795-1

§§17-795-28 to 17-795-35 (Reserved)

Subchapter 4 SEE Program Agreement

§17-795-36 SEE program agreement
§§17-795-37 to 17-795-45 (Reserved)

Subchapter 5 Employer SEE Reimbursement
Payments

§17-795-46 Claims for reimbursement payments
§17-795-47 Payment determination and notification
§17-795-48 Underpayments and overpayments
§§17-795-49 to 17-795-59 (Reserved)

Subchapter 6 Departmental Review

§17-795-60 Employer disputes
§17-795-61 Review process
§17-795-62 Review decision

SUBCHAPTER 1

GENERAL PROVISIONS

§17-795-1 Purpose. The purpose of this chapter is to establish the rules governing the administration and implementation of the Supporting Employment Empowerment (SEE) program, a support service for First-To-Work program participants. This subchapter includes eligibility participation requirements for program participants and prospective employers, and determination of employer reimbursement payments. Nothing in this chapter shall be construed as providing an employer any right to participate in the SEE program. [Eff _____] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§17-795-2 Program description. The SEE program is a subsidized employment component of the First-to-Work program administered by the department as described in section 17-794.1-24, to assist program participants by providing employment opportunities with eligible employers. [Eff] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§17-795-3 Definitions. As used in this chapter: "Adequate notice" means a written notice that includes:

- (1) A statement of the action the department or department designee has taken or intends to take;
- (2) The reason for the intended action;
- (3) The specific department rule supporting the action; and
- (4) The name of the contact person for additional information.

An adequate notice may be received prior to the department action.

"Department" or "DHS" means the department of human services or its designee.

"Eligible employer" means an employer who has been determined to meet the requirements defined by the department, to participate with the SEE program.

"First-to-Work" or "FTW" means the education, training, employment, and support services program administered by the department as described in chapter 17-794.1.

"Hawaii Compliance Express" or "HCE" means the electronic system that allows vendors doing business with state or county agencies to obtain proof of compliance with applicable laws in accordance with section 103D-310(c), HRS and section 3-122-112.

"Overpayment" means the amount of reimbursement payment that is in excess of the amount which the employer is entitled to receive by regulation.

"Participant" means a recipient of Temporary Assistance for Needy Families (TANF) benefits who is engaged in the SEE program.

"State" means the State of Hawaii.

"Subsidized employment" means full- or part-time employment for which the employer receives a subsidy from the department to offset some or all of the wages and costs of employing a participant.

"Supporting Employment Empowerment program" or "SEE program" means the subsidized employment program for First-to-Work participants administered by the department.

"Temporary Assistance for Needy Families" or "TANF" means the financial assistance program administered by the department under 42 U.S.C. sections 601-619 and section §346-14, HRS.

"Underpayment" means the amount of reimbursement payment to the employer, authorized by the department, is less than the amount which the employer was entitled to receive by regulation.

"Unsubsidized employment" means full- or part-time employment in the public or private sector that is not subsidized by TANF or any other public program. [Eff _____] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§17-795-4 Program administration. The department shall be responsible for the administration and supervision of the SEE program. [Eff _____] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§17-795-5 Contracting authority. (a) The department may enter into contracts with government agencies, or private nonprofit or for-profit organizations to carry out the provisions of this chapter.

(b) Contracts may cover any service or activity including but not limited to employer partnership development, employment site development, employment placement, job coaching, and processing employer reimbursement payments.

(c) Contracted services shall be:

(1) Consistent with the provisions of section

17-795-4; and

- (2) Services that will enhance a participant's ability to prepare for, accept, and retain employment.

(d) The department's designee shall have decision-making authority with regard to participants and employers in the SEE program only to the extent delegated by the department. The department designee shall comply with determinations by the department regarding interpretation of the SEE program policies and rules. [Eff _____] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§17-795-6 Confidentiality. (a) The rules of confidentiality shall be in accordance with chapter 17-601.

(b) Use or disclosure of information shall be limited to employment related activities, job training, job development, job placement, or provision of support services to participants who have been referred to and are engaged in the SEE program. [Eff _____] (Auth: HRS §346-14) (Imp: HRS §§346-10 and 346-261; 45 C.F.R. §§260, et seq.)

§17-795-7 Geographical location. The SEE program shall be available on a statewide basis, subject to availability of funds. [Eff _____] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§17-795-8 Termination of the program. (a) The department, at its sole discretion, may terminate the SEE program in whole or in part upon thirty days written notice for any reason including but not limited to insufficient funds, decreased need for the program, or if it is determined no longer beneficial to the department or FTW participants.

(b) The department, at its sole discretion, may refuse to take new employer applications, or reduce employer reimbursement rates when there are

insufficient funds to continue reimbursements at the current rates.

(c) The department, at its sole discretion, may terminate an individual agreement with a specific employer or refuse to enter into future agreements with a specific employer. [Eff]
(Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§§17-795-9 to 17-795-13 (Reserved)

SUBCHAPTER 2

PARTICIPANT REQUIREMENTS

§17-795-14 Eligibility requirements. (a) A SEE program participant shall be a TANF recipient and active with the FTW program at the time of referral with no less than six remaining TANF months, or with as many remaining TANF months as necessary to meet the terms of the SEE agreement.

(b) A SEE program participant who becomes ineligible for TANF benefits for reasons other than those provided in subsection (c), shall be allowed to complete their subsidized employment under the current SEE program agreement.

(c) A SEE program participant who becomes ineligible for TANF benefits due to reasons described in section 17-656.1-17 shall not be allowed to complete their subsidized employment under the current SEE program agreement. The current SEE program agreement shall be terminated immediately and a notice shall be provided to the participant and the employer. [Eff] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§17-795-15 Participation requirements. A SEE participant shall:

- (1) Consent to release information relevant to the SEE program participation for the length of the agreement period to the employer, the department, and the department designee;
- (2) Maintain a minimum work schedule of twenty-four hours per week; and
- (3) Attend scheduled meetings with the department including but not limited to intake sessions, appointments, and job interviews. [Eff _____] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§17-795-16 Noncompliance and voluntary quit. (a) A SEE program participant shall be subject to TANF benefits sanction as specified under chapter 17-656.1 when the participant:

- (1) Fails to comply with the requirements of this chapter and chapter 17-794.1; or
 - (2) Voluntarily quits a subsidized employment without good cause or is terminated by an employer for cause.
- (b) A SEE participant shall be ineligible to participate with the SEE program when the participant:
- (1) Voluntarily quits a subsidized employment without good cause or is terminated by an employer for cause; or
 - (2) Is no longer a TANF recipient and the SEE program agreement has ended.
[Eff _____] (Auth: HRS §346-14)
(Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§§17-795-17 to 17-795-22 (Reserved)

SUBCHAPTER 3

EMPLOYER REQUIREMENTS

§17-795-23 Eligibility requirements. (a)
Participation in the SEE program shall be limited to a private for-profit employer who satisfies standards of quality as defined by the department, including but not limited to:

- (1) Compliance with any applicable federal, state, and county laws that in any way affect the employer's ability to do business in the State for the duration of participation with the SEE program;
- (2) Compliance with the rules or regulations of the following:
 - (A) The state department of taxation;
 - (B) The U.S. Internal Revenue Service;
 - (C) The state department of commerce and consumer affairs; and
 - (D) The state department of labor and industrial relations.

Compliance may be evidenced by registration with the Hawaii Compliance Express;

- (3) Possession of all applicable licenses and accreditation related to the nature of the business, required under any applicable federal, state, and county laws; and
- (4) Compliance with any applicable federal, state, and county employment laws or regulations including but not limited to the follow:
 - (A) Implementation and maintenance of a written smoking policy as required by chapter 328K, HRS or its successor provision;
 - (B) Implementation and maintenance of a drug free workplace as required by the Drug Free Workplace Act of 1988;
 - (C) Implementation and maintenance of all practices, policies, and procedures required by federal, state, and county

laws, including but not limited to the Americans with Disabilities Act of 1990 (42 U.S.C. §12101, et seq.), and the Rehabilitation Act (29 U.S.C. §701, et seq.); and

- (D) No employer with the SEE program shall engage in any discrimination that is prohibited by any applicable federal, state, or county laws.

(b) The employer shall not owe money to the State pursuant to a judgment, a court order, fine, or any other legal obligation.

(c) A determination of eligibility does not grant the employer any rights or interest in participation with the SEE program. The department is not obligated to refer or place SEE participants with the employer. [Eff _____] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§17-795-24 Application and eligibility determination. (a) The employer shall submit:

- (1) A completed application form signed by the business owner or by a legally authorized representative;
 - (2) Supporting documents as requested by the department or department designee; and
 - (3) A detailed description of the positions the employer will make available for recruitment through the SEE program, including but not limited to the position title, role, assigned job duties, responsibilities, and limitations.
- (b) The department shall:
- (1) Review the completed application and supporting documents to determine the employer's eligibility to participate with the SEE program;
 - (2) Provide the employer up to ten calendar days from the date of the request to submit additional information or documents to establish eligibility when the application

is determined by the department to be incomplete, or supporting documents previously submitted are insufficient to determine eligibility, or both; and

- (3) Dispose of the application within thirty calendar days of receipt of all required documents.

(c) Eligibility shall be for a twelve-month period beginning from the date of eligibility as determined by the department.

(d) The employer shall not be granted provisional eligibility.

(e) The employer shall be compliant with certifications described in this section prior to entering into any SEE program agreements.

(f) The employer shall not place a participant:

- (1) In a position involving activities that are defined as or may be construed as illegal activities in accordance with federal, state, and county laws; or
- (2) In a position that provides adult-oriented entertainment in which performers disrobe or perform in a partially clothed or unclothed state.

(g) The eligibility period may be reduced or revoked if the employer:

- (1) Fails to timely submit documents as requested by the department;
- (2) Fails to adhere to any requirements set forth in this chapter; or
- (3) Demonstrates a pattern of discharging SEE program participants, subsequent to the expiration of the SEE program agreement, without good cause.

The employer shall be ineligible for participation in the SEE program for a period determined by the department.

(h) The department shall terminate any active SEE program agreements if the employer is determined ineligible prior to the expiration of the current eligibility period.

(i) The employer's eligibility shall not be transferable and shall become invalid when:

- (1) The employer ceases to operate its business;
or
 - (2) There is a change in business ownership.
- (j) The employer shall not employ, at any given time, more than ten per cent of its total workforce, per worksite, through the SEE program.
[Eff _____] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§17-795-25 Eligibility redetermination. (a) Redetermination for eligibility to participate with the SEE program shall be done annually based on the current date of eligibility.

(b) The employer shall meet the eligibility requirements described in section 17-795-23 and satisfy the application and eligibility determination process described in section 17-795-24.
[Eff _____] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§17-795-26 Notification of eligibility. (a) The department shall notify the employer of its eligibility to participate with the SEE program. The written notice shall contain:

- (1) A statement of the action taken;
 - (2) Reason or reasons for the action;
 - (3) Effective date of the action; and
 - (4) Specific rules supporting the action.
- (b) Eligibility determination shall be at the sole discretion of the department and shall not be reviewable. [Eff _____] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§17-795-27 Participation requirements. (a) When a participant is employed through the SEE program, the employer shall:

- (1) Agree to employ the SEE program participant for a minimum of twenty-four hours per week but no more than forty hours per week, for

- no more than three months. Employment may be extended up to three months following the initial period, but not to exceed a cumulative total of six months;
- (2) Agree to receive reimbursement payments through direct deposit into a bank account designated by the employer;
 - (3) Not assign the SEE participant to a position that will result in the displacement of employed workers;
 - (4) Pay the SEE program participant at a rate that is comparable to other employees in the same position;
 - (5) Provide the SEE program participant the same working conditions and entitlements as employees in similar positions;
 - (6) Provide the SEE program participant with the same benefits provided to all other employees in similar positions including but not limited to temporary disability insurance, worker's compensation, unemployment insurance, health insurance benefits, and sick, vacation, personal, and holiday leaves;
 - (7) Provide supervision, training, support, and guidance necessary to enable the SEE program participant to develop basic work habits and gain self-confidence to potentially transition to unsubsidized employment;
 - (8) Complete an evaluation of the SEE program participant, on a department prescribed form, after the initial thirty days of employment and upon termination of the SEE program agreement;
 - (9) Agree to provide SEE program participants preference for an unsubsidized position with the employer after the participant successfully completes any probationary or training period as specified in the SEE program agreement; and
 - (10) Issue the SEE program participant an employment termination notice when terminating the SEE program agreement or

decision to not retain the SEE program participant in an unsubsidized position at the end of the subsidized employment period.

(b) The employer shall acknowledge the applicability of section 11-355, HRS.

(c) The employer shall report to the department within ten calendar days from the date of occurrence of any of the following events:

- (1) The compliance status with the requirements described in sections 17-795-24 and 17-795-25 has changed;
- (2) An incorrect reimbursement payment is received;
- (3) A SEE program participant's employment is terminated and reason for the termination;
- (4) The employer files for bankruptcy;
- (5) There is a change in business owner;
- (6) There is a change in legally authorized representative;
- (7) There is a change in business address or business location; or
- (8) There is a change in the bank account designated for direct deposit payments.

(d) The employer shall hold harmless the State, the department, their officers and employees from and against any liability, loss, damage, cost, or expense arising out of or in conjunction with the acts or omissions of the SEE program participant.

[Eff _____] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§§17-795-28 to 17-795-35 (Reserved)

SUBCHAPTER 4

SEE PROGRAM AGREEMENT

§17-795-36 SEE program agreement. (a) The employer shall sign a SEE program agreement for each participant selected for employment.

- (b) The SEE program agreement shall:
 - (1) Detail the responsibilities of the department, the employer, and the SEE program participant;
 - (2) Specify the effective date and termination date of the agreement; and
 - (3) Be signed by the department or department designee, the business owner or legally authorized representative, and the SEE program participant.
- (c) The SEE program agreement shall remain in effect until:
 - (1) The SEE program participant terminates employment with or without good cause;
 - (2) The employer or the department terminates the SEE program agreement for cause;
 - (3) The termination date of the SEE program agreement; or
 - (4) The SEE program agreement is terminated pursuant to section 17-795-14.
[Eff _____] (Auth: HRS §346-14)
(Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§§17-795-37 to 17-795-45 (Reserved)

SUBCHAPTER 5

EMPLOYER SEE REIMBURSEMENT PAYMENTS

§17-795-46 Claims for reimbursement payments.

- (a) The SEE program subsidies paid to the employer shall be issued as reimbursement payments.
- (b) The department shall reimburse the employer for wages and other applicable costs in accordance with the SEE agreement signed by the department, the employer, and the SEE program participant.
- (c) The employer shall submit a complete reimbursement claim to the department no later than the last calendar day following the month for which

the wages were paid to the SEE program participant. Invoices sent through the U.S. Postal Service must be postmarked no later than thirty days after the wages were paid to the SEE program participant.

(d) A complete reimbursement claim shall include:

- (1) A department prescribed claim or invoice form, completed and signed by the business owner or by a legally authorized representative;
- (2) Corresponding pay statements or other documents that verify the wages paid to the SEE program participant; and
- (3) Corresponding documents that verify transportation costs as established in the SEE program agreement.

(e) When a reimbursement claim is determined incomplete, the department shall notify the employer of the incomplete claim, and provide the employer up to ten calendar days from the date of the notice to complete its reimbursement claim and provide the requested documents.

(f) The employer shall be ineligible for reimbursement for any claims that are not submitted timely and remain incomplete after the ten-day extension period, except upon the showing of good cause that is accepted by the department.

(g) Reimbursement payments shall be made through direct deposit into a bank account designated by the employer. [Eff _____] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§17-795-47 Payment determination and notification. (a) The department shall:

- (1) Review the employer's reimbursement claims and determine the eligible amount of reimbursement. The method of calculating reimbursement payments is established in Exhibit I, entitled "Supporting Employment Empowerment (SEE) Program - Rates and Calculation Method for Employer

- (3) Corrective payments shall be issued through direct deposit into the bank account designated by the employer; and
 - (4) The department, as provided by law, may use any corrective payments owed to the employer, to offset against any obligations that the employer may owe to the State of Hawaii including but not limited to the payment of taxes, child support obligations or levies of any kind or nature.
- (b) An overpayment shall be created when:
- (1) The employer fails to meet the requirements or provide information, as specified in this chapter that results in an overpayment;
 - (2) The department makes an error in determining the employer's eligibility to participate with the SEE program that results in an overpayment; or
 - (3) The department makes an error in calculating a payment amount.
- (c) An employer subject to recovery of an overpayment shall be provided adequate notice by the department including:
- (1) The reasons, dates, and the amount of the alleged overpayment; and
 - (2) The proposed method by which the overpayment shall be recovered.
- (d) The employer shall repay the department in the form of cash, cashier's check, or money order, through one of the following methods:
- (1) Repayment in full; or
 - (2) Repayment in installments when a payment schedule is mutually agreed to by the employer and the department.
- (e) Recovery of an overpayment to former participating employers shall be processed in accordance with the department's procedures for collection action.
- (f) If the employer has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one against the other in correcting the payment. If the offset results in an underpayment

or overpayment balance, then corrective action shall be processed in the manner described in this section.

(g) If the employer disagrees with the department's determination of nonpayment or payment amount of a reimbursement claim, the employer may dispute the determination through a department review in accordance with sections 17-795-60 and 17-795-61. [Eff] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§§17-795-49 to 17-795-59 (Reserved)

SUBCHAPTER 6

DEPARTMENTAL REVIEW

§17-795-60 Employer payment disputes. (a) If an employer disputes a nonpayment or the amount of an eligible reimbursement payment, the employer may submit a request for departmental review. Departmental review shall be utilized solely for the purpose of resolving payment disputes.

(b) A request for departmental review shall be submitted in writing to the department no later than thirty calendar days from the date of the notice of nonpayment. Any request for departmental review received after the thirty-day deadline may not be honored.

(c) A request for departmental review shall include an explanation of why the employer disagrees with the nonpayment or eligible reimbursement payment amount, and shall include all arguments and evidence the employer deems relevant to support the employer's claim for the disputed payment.

(d) Untimely requests for departmental review shall not be granted, except upon the showing of good cause that is accepted by the department. Good cause means the employer provides evidence of circumstances that are out of the employer's control including but not limited to natural disaster, family illness or

death, or a major event causing a disruption of the employer's business. [Eff] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§17-795-61 Review process. (a) The department shall acknowledge the employer's request for a departmental review, in writing, no later than seven business days from the date it is received by the department.

(b) The departmental review shall be conducted by the department at a time and in a manner determined by the department, at the department's discretion, and may be conducted in-person, through telephone conference, by video conferencing, in writing, or by a combination of these methods.

(c) In addition to the arguments and evidence provided by the employer in the request for departmental review, pursuant to section 17-795-60, the department may request additional information from the employer that the department deems relevant to its review.

(d) The department shall render its decision in writing within sixty calendar days from the written acknowledgement in subsection (a). [Eff] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)

§17-795-62 Review decision. The decision rendered by the department following the departmental review is a final decision for the purposes of judicial review in accordance with section 91-14, HRS." [Eff] (Auth: HRS §346-14) (Imp: HRS §346-261; 45 C.F.R. §§260, et seq.)2.

2. The adoption of chapter 17-795, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.